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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,208	01/23/2002	Joerg Bischof	CH920000005	5051
54856	7590	07/26/2007		
LOUIS PAUL HERZBERG 3 CLOVERDALE LANE MONSEY, NY 10952			EXAMINER LEWIS, CHERYL RENE A	
			ART UNIT 2167	PAPER NUMBER
			MAIL DATE 07/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/055,208

Applicant(s)

BISCHOF ET AL.

Examiner

Cheryl Lewis

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-9 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to the applicants' communication received on May 10, 2007.
2. Claims 1-20 are presented for examination.
3. The applicants have amended claims 1, 2, 5, 10-12, and 18. The applicants have not cancelled or added any new claims.
4. Applicants' arguments with respect to claims 1-20 have been considered but are deemed to be moot in view of the new grounds of rejection.

Allowable Subject Matter

5. Claims 5-9 and 20 are allowed.

Claim Objections

6. Claims 11 and 12 are objected to because of the following informalities:

Independent claims 11 and 12 are missing "said method further comprising performing..." from the preamble. The Examiner kindly requests that the applicants add comprising to the preamble of the independent claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1 and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

"said method performing an EndTransaction operation in case EndTransaction operation is a RollbackTransaction operation aborting a transaction as unsuccessful, by issuing a corresponding RollbackTransaction operation within said execution environment independent from the nesting level of said RollbackTransaction operation;

said method performing, once a RollbackTransaction operation has been executed within said nested transaction, any further StartTransaction operation or any further EndTransaction operation within said nested transaction independent from its nesting level by rejecting it as being in error without issuing a corresponding Start Transaction operation or a corresponding EndTransaction operation to the execution environment, and

wherein said method:

checks the nesting level of any of said StartTransaction or EndTransaction operations by a depth counter,

increments said depth counter in the case of processing a StartTransaction operation, and

decrements said depth counter in the case of processing an EndTransaction operation which is a CommitTransaction operation, and sets said depth counter to zero or an invalid value in the case of processing an EndTransaction operation which is a Rollback Transaction operation.”

Claims 1 and 10-12 do not comprise the necessary structural relationships of claimed elements that are presented in the similarity of independent claim 5.

Claim 10 does not comprise any of the tangible claim limitations presented in any of claims 1, 5, 11, and 12. Claim 10 is merely a set of executable statements (i.e., software).

Further, for independent claims 1 and 10-21 the Examiner kindly recommends adding the above suggested claim limitations that are presented in independent claim 5 to keep consistency among the independent claims collectively.

The remaining claims are dependent claims, these dependent claims are dependent on the above objected to base claims. They are therefore objected to for at least the reason set forth above.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 13-17 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As follows:

Claims 13-17 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 13, 15, and 19 are claiming an article of manufacture and being dependent on independent claims 1 and 5 and dependent claim 18. Independent claims 1 and 5 and dependent claim 18 are all method claims.

Claims 14, 16, and 17 are claiming a program storage device and being dependent on independent claims 1, 5, and 10. Claims 1, 5, and 10 are all method claims and dependent claims 14, 16, and 17 are claiming a program storage device.

The claimed inventions, as a whole must accomplish a **practical application**. That is, it must produce a **"useful, concrete, and tangible result."** *State Street, 149 F.3d at 1373; 47 USPQ2d at 1601-02. MPEP 2106*. In each of these cases the **result** is an article of manufacture and a program storage device claiming a method claim. The claimed limitations are an abstraction as they are not **useful, concrete, and tangible**, they are not put in any tangible form and not useful because they are not presented in a way to provide some result that is of utility that may exist in the specification however no specific use is provided for in the claimed invention. Thus the claims are non-statutory and stand rejected under 101 as not **producing a "useful, concrete, and tangible result."**

Although, these claims are dependent claims. These claims are non-statutory because they comprise an article of manufacture and a program storage device, while their dependency depends on independent claims that are claiming a method claim.

It is recommended that the applicants place these claims in independent form, in an effort to claim and rely on an article of manufacture and a program storage device.

Thus, the remaining dependent claims not mentioned in the above rejections are also rejected for being dependent upon the above recited independent claims, these claims are also rejected for the reasons set forth above.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al. (Patent No. 5,903,891 filed February 25, 1997, hereinafter Chen).

13. Regarding Claim 10, Chen teaches hierarchical information processes that share intermediate data and formulate contract data.

The method and associated system for hierarchical information processes that share intermediate data and formulate contract data as taught or suggested by Chen includes:

checking whether StartTransaction operation is on the first nesting level of a nested transaction (col. 5, lines 53-62) and issuing a corresponding StartTransaction operation within the execution environment only if StartTransaction operation is on the first level of the nested transaction (col. 5, lines 53-62, col. 7, lines 15-29).

NAME OF CONTACT

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Lewis whose telephone number is (571) 272-4113. The examiner can normally be reached on 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

(571) 273-4113 (Use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper/amendment be faxed directly to them on occasions.).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/ Technology Center (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Lewis/
Patent Examiner, A.U. 2167
June 11, 2007

NAME OF CONTACT

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Art Unit: 2167

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/Cheryl Lewis/
Patent Examiner, A.U. 2167
July 19, 2007